



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
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Violations of the State Sanitary Code and Municipal Zoning Ordinances: Should Housing Violations Be Corrected in Illegal Units?

Scenario: A board of health identifies several violations of Chapter II of the State Sanitary Code during a housing inspection. Afterward, the board discovers that the residence also violates local zoning regulations.

The Department of Public Health has been asked to address the preceding scenario: Does enforcement of zoning requirements take precedence over inspection and enforcement of the Sanitary Code? If so, what are the liability implications for the board of health if it failed to inspect and enforce potential health and safety violations? The Office of the General Counsel has determined that the Sanitary Code and local zoning ordinances can be enforced independently of each other. The following is the Department's response based on a search of relevant statutes and case law.

The State Sanitary Code is a state law (M.G.L. c.111, §127A) which authorizes the Department to issue regulations relating to matters of public health and safety and delegates enforcement of the Code to the local boards of health. Regulations promulgated by the Department state that, "The Sanitary Code shall apply throughout the Commonwealth unless and to the extent the provisions of any chapter are expressly limited." (105 CMR 400.010) An opinion of the Attorney General states that the, "State Sanitary Code is applicable throughout the Commonwealth and is enforceable whatever the area or situation." (Op. Atty. Gen., June 3, 1966, p.361) Under this language, zoning enforcement does not supersede the State Sanitary Code unless directly authorized to take precedence by an express provision contained in an applicable statute, regulation, or case law.

The Department has not identified any relevant statutes, regulations, or case law that would suggest that zoning enforcement should take precedence over the State Sanitary Code. In the absence of any such express authority, it must be assumed that there is no such priority of zoning ordinances over the Sanitary Code. The Department concludes that the Sanitary Code and local zoning ordinances can be enforced independently of each other in any order the municipality chooses.

Therefore, the Department recommends that local boards of health inspect and enforce the State Sanitary Code regardless of whether a unit is also in violation of local zoning requirements. Clearly, if the health inspector identifies such zoning violations, the appropriate zoning authority should be notified. As a practical matter, the Department encourages Code inspectors to work closely with zoning/building inspectors when both Code and zoning violations exist and to inform the property owner of the nature of both violations. As long as the unit continues to be occupied, the board of health should enforce compliance with the Sanitary Code. Once the unit is vacated, the board may choose to dismiss one or all outstanding violations, as appropriate.